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HEATHER BARTELL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO / OAKLAND DIVISION

HEATHER BARTELL, an individual,

Case No. 3:14-cv-04238-RS

Plaintiff,

FIRST AMENDED COMPLAINT

v.

DEMAND FOR JURY TRIAL

NATIONAL COLLEGIATE STUDENT  
LOAN TRUST 2005-3, a Delaware  
Statutory Trust, PATENAUDE &  
FELIX, A PROFESSIONAL  
CORPORATION, a California  
corporation; MICHAEL KAHN,  
individually and in his official  
capacity; and NCO FINANCIAL  
SYSTEMS, INC., a Pennsylvania  
corporation and DOES 1 through 10,  
inclusive,

15 United States Code § 1692 *et seq.*  
California Civil Code § 1788 *et seq.*

Defendants.

\_\_\_\_\_ /

Plaintiff HEATHER BARTELL, based on information and belief and  
investigation of counsel, except for those allegations which pertain to the named  
plaintiff or her attorneys (which are alleged on personal knowledge), hereby makes  
the following allegations:

INTRODUCTION

1. This is an action for actual damages, statutory damages, attorney fees and  
costs brought by individual consumers for Defendants' violations of the Fair Debt

1 Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA) and the Rosenthal  
2 FDCPA, California Civil Code § 1788 *et seq.* (RFDCPA), which prohibit debt  
3 collectors from engaging in abusive, deceptive and unfair practices.

4 2. The United States Congress has found abundant evidence of the use of  
5 abusive, deceptive, and unfair debt collection practices by many debt collectors,  
6 and has determined that abusive debt collection practices contribute to the number  
7 of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions  
8 of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15  
9 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”), to eliminate abusive debt collection  
10 practices by debt collectors, to insure that those debt collectors who refrain from  
11 using abusive debt collection practices are not competitively disadvantaged, and to  
12 promote consistent State action to protect consumers against debt collection  
13 abuses.

14 3. The California Legislature has determined that the banking and credit  
15 system and grantors of credit to consumers are dependent upon the collection of  
16 just and owing debts and that unfair or deceptive collection practices undermine  
17 the public confidence that is essential to the continued functioning of the banking  
18 and credit system and sound extensions of credit to consumers. The Legislature  
19 has further determined that there is a need to ensure that debt collectors exercise  
20 this responsibility with fairness, honesty and due regard for the debtor’s rights and  
21 that debt collectors must be prohibited from engaging in unfair or deceptive acts or  
22 practices.

### 23 JURISDICTION

24 4. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §  
25 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28  
26 U.S.C. § 1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and  
27 2202.  
28



1 its Registered Agent, Raymond Patenaude, whose business address is 4545  
2 Murphy Canyon Road, 3rd Floor San Diego, CA 92123-4363. The principal  
3 business of P&F is collection of consumer debts and filing and maintaining civil  
4 debt collection lawsuits and obtaining judgments in those cases by utilizing the  
5 U.S. Mail, telephone and internet. P&F regularly collects, directly or indirectly,  
6 consumer debts it acquires in default (or has treated the debt as if it were in default  
7 at the time of acquisition) via U.S. Mail, telephone, internet, and civil debt  
8 collection lawsuits. P&F is a “debt collector” within the meaning of 15 U.S.C. §  
9 1692a(6) and Cal. Civil Code § 1788.2(c).

10 11. Defendant MICHAEL KAHN (“KAHN”) is a natural person and licensed  
11 attorney in the State of California and is or was an employee and/or agent of P&F  
12 at all relevant times. The principal purpose of KAHN’s business is the collection of  
13 consumer debts due or alleged to be due to another. KAHN may be served at his  
14 current business address which is 4545 Murphy Canyon Road, 3rd Floor San  
15 Diego, CA 92123-4363. KAHN is engaged in the business of collection of consumer  
16 debts and filing and maintaining civil debt collection lawsuits and obtaining  
17 judgments in those cases by utilizing the U.S. Mail, telephone and internet. KAHN  
18 regularly collects, directly or indirectly, consumer debts alleged to be due to  
19 another via U.S. Mail, telephone, internet, and civil debt collection lawsuits. KAHN  
20 is a “debt collector” within the meaning of 15 U.S.C. § 1692a(6) and Cal. Civil Code  
21 § 1788.2(c).

22 12. Defendant NCO Financial Systems, Inc. (NCO) is a Pennsylvania  
23 corporation, registered with the California Secretary of State with an address of  
24 Attn: Mayas Erickson, 3850 N. Causeway Blvd., Suite 200, Metairie LA 70002.  
25 NCO may be served by serving CT Corporation System, 818 West Seventh St., 2d  
26 Floor, Los Angeles CA 90017. NCO is engaged in the business of collection of  
27 consumer debts and hiring attorneys to file and maintain civil debt collection  
28 lawsuits and obtaining judgments in those cases by utilizing the U.S. Mail,

1 telephone and internet. Plaintiff is informed and believes and thereon alleges that  
2 NCO directs and manages litigation on behalf of entities such as NCT, by referring  
3 NCT's cases to law firms such as P&F. NCO claims to be the Subservicer on behalf  
4 of NCT and similar student loan trusts and claims to be the dedicated custodian of  
5 records for the trusts. As such, NCO executes affidavits regarding account  
6 documents, verifies responses to discovery and provides testimony on behalf of the  
7 student loan trusts. Plaintiff is informed and believes, and thereon alleges, that  
8 NCO provided information about plaintiff to P&F which was intended to, and was  
9 used, in an attempt to collect consumer debt. Specifically, Plaintiff is informed and  
10 believes and thereon alleges that NCO provided residence address information to  
11 P&F and NCO provided documents to P&F purporting to establish that Plaintiff  
12 was in a Debtor-Creditor relationship with NCT, to ratify and support P&F's  
13 attempt to collect consumer debt from Plaintiff. NCO provided an affidavit signed  
14 by one of its employees to be filed in Superior Court for the purpose of obtaining a  
15 default judgment against Plaintiff. NCO regularly collects, directly or indirectly,  
16 consumer debts alleged to be due to another via U.S. Mail, telephone, internet, and  
17 civil debt collection lawsuits. NCO is a "debt collector" within the meaning of 15  
18 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c).

19 13. The true names and capacities, whether individual, corporate, associate  
20 or otherwise, of Defendants DOES 1 through 10, inclusive, and each of them, are  
21 unknown to Plaintiff at this time, and Plaintiff therefore sues said Defendants by  
22 such fictitious names. Plaintiff is informed, believes and thereon alleges, that at all  
23 relevant times alleged in this Complaint, Defendants DOES 1 through 10, inclusive,  
24 are natural persons, limited liability companies, corporations or business entities  
25 of unknown form that have or are doing business in the state of California. Plaintiff  
26 will seek leave of the Court to replace the fictitious names of these DOE Defendants  
27 with their true names when they are discovered by Plaintiff.  
28



original creditor and later claimed by an entity known as National Collegiate Student Loan Trust 2005-3, a Delaware statutory trust (hereinafter “NCT”).

19. Plaintiff is informed and believes, and thereon alleges, that sometime thereafter on a date unknown to Plaintiff, the alleged debt was consigned, placed or otherwise assigned to Defendants P&F and KAHN for collection from Plaintiff.

*The Telephone Message Left for Plaintiff*

20. On or about September 19, 2013, an employee or agent of Defendant P&F left a voice message for Plaintiff. P&F’s employee or agent left the message without meaningful disclosure of caller’s identity and failed to disclose in the initial oral communication that the caller was a debt collector attempting to collect a debt.<sup>1</sup>

21. Plaintiff looked up the telephone number and determined that it was a number used by P&F. On September 20, 2013, Plaintiff called the telephone number and stated to the person answering on behalf of P&F that Plaintiff was a disabled veteran and that her income, consisting solely of disability benefits, was not subject to debt collection efforts.<sup>2</sup> As a result, Defendants were aware that Plaintiff was disabled within the meaning of California Civil Code sections 1761(g) and 3345.

*The NCT v. Bartell State Court Complaint*

22. On or about November 4, 2013, Defendants filed a lawsuit in the Superior Court of San Francisco County, captioned *National Collegiate Student Loan Trust 2005-3 v. Heather Bartell, et al.*, Case No. CGC-13-535237 (“the *NCT v. Bartell* complaint”), which sought to collect \$43,479.05 in damages, plus costs of suit.

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<sup>1</sup> 15 U.S.C. § 1692d(6) and 15 U.S.C. § 1692e(11); see *Costa v. National Action Financial Svcs* (E.D. Cal. 2007) 634 F. Supp.2d 1069, 1075 and *Hosseinzadeh v. M.R.S. Assocs., Inc.* (C.D. Cal. 2005) 387 F. Supp. 2d 1104, 1112

<sup>2</sup> California Code of Civil Procedure § 704.130.



23. A true and accurate copy of the *NCT v. Bartell* complaint is attached hereto, marked Exhibit 1, and by this reference is incorporated herein.

24. The *NCT v. Bartell* complaint (Exhibit 1) falsely states that Plaintiff became indebted directly to NCT.

25. In its First Cause of Action, the *NCT v. Bartell* complaint (Exhibit 1) falsely states that:

BC-1. Plaintiff (*name*): NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S) alleges that on or about (*date*): August 29, 2005 a written agreement was made made between (*name parties to the agreement*): NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S) and HEATHER BARTELL

The essential terms of the agreement are as follows:

Defendant(s) entered into a written contract with Plaintiff, whereby Plaintiff loaned money to Defendant(s) for the financing of Education expenses.

26. At no time has there been a written agreement between Plaintiff and NCT nor has Plaintiff breached any written agreement with NCT.

27. In its Second Cause of Action, the *NCT v. Bartell* complaint falsely states that:

CC-1. Plaintiff (*name*): NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S) alleges that defendant(s) (*name*): HEATHER BARTELL became indebted to plaintiff:

a. within the last four years

(2) because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff;

b. within the last four years

(6) This cause of action is based upon account number XXXXX2641/002-001000 for the sum by which Defendant has been unjustly enriched by virtue of Defendant receiving monetary or other benefit, by Defendant knowingly requesting the funds at issue and/or accepting the benefits bestowed. It is inequitable for Defendant to retain said benefits without repaying Plaintiff the value thereof.



1           28. At no time was an account stated in writing between NCT and Plaintiff  
2 nor have Plaintiffs ever agreed that they were indebted to NCT.

3           29. At no time did Plaintiff become directly indebted to NCT, as alleged in  
4 the *NCT v. Bartell* complaint (Exhibit 1).

5           30. The *NCT v. Bartell* complaint (Exhibit 1) fails to identify the original  
6 creditor. At this time, Plaintiff does not know the identity of the original creditor.  
7 At one point in BC-1 of the First Cause of Action, the complaint (Exhibit 1) alleges  
8 that "Plaintiff is the assignee for consideration of this contract," thereby revealing  
9 that it was not in fact, the original creditor. However, under the least sophisticated  
10 consumer standard, the complaint (Exhibit 1) is confusing and misleading. In any  
11 event, the complaint fails to accurately identify the original creditor.

12           31. Plaintiffs are informed and believe, and thereon allege, that by failing to  
13 identify the original creditor in the *NCT v. Bartell* complaint (Exhibit 1),  
14 defendants made and used false, deceptive, and misleading material  
15 representations in an attempt to collect the alleged debt, in violation of 15 U.S.C. §§  
16 1692e and 1692e(10).<sup>3</sup>

17           32. Plaintiffs are informed and believe, and thereon allege, that by failing to  
18 identify the original creditor in the *NCT v. Bartell* complaint (Exhibit 1),  
19 defendants used an unfair or unconscionable means to collect or attempt to collect  
20 a debt, in violation of 15 U.S.C. § 1692f.

21           33. Plaintiffs are informed and believe, and thereon allege, that Defendants  
22 have filed and served standard form complaints in the form of Exhibit 1 on more  
23 than 40 persons in the State of California in the one year preceding the filing of this  
24 Complaint. Therefore, Plaintiff may seek leave to amend this Complaint to add  
25 class allegations at a later date.

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26  
27           <sup>3</sup> See *Tourgeman v. Collins Financial Services, Inc.*, 2014 WL 2870174  
28 (C.A.9 (Cal.)) (Case No. 12-56783 (June 25, 2014)) and *Heathman v.*  
*Portfolio Recovery Associates, LLC* 2013 WL 3746111 (S.D. Cal. 2013)

34. Plaintiff is informed and believes, and thereon alleges, that the *NCT v. Bartell* complaint (Exhibit 1) misrepresented the character, amount and legal status of the alleged debt.

35. The *NCT v. Bartell* complaint (Exhibit 1) bears an image of a signature believed to be that of Defendant KAHN.

36. Plaintiff is informed and believes, and thereon alleges, that KAHN did not conduct a professional review of Plaintiff's account before drafting and filing the the *NCT v. Bartell* complaint (Exhibit 1) and sending it to Plaintiff.<sup>4</sup>

37. Plaintiff is informed and believes, and thereon alleges, that the *NCT v. Bartell* complaint (Exhibit 1) misrepresented the role and involvement of legal counsel.

38. Plaintiff is informed and believes, and thereon alleges, that the *NCT v. Bartell* complaint (Exhibit 1) misrepresented the true source or nature of the communication thereby making false statements in an attempt to collect a debt.

39. By drafting and filing the *NCT v. Bartell* complaint (Exhibit 1), Defendants attempted to collect a nonexistent debt from Plaintiff, an action that cannot lawfully be taken.

40. Defendants filed the *NCT v. Bartell* complaint (Exhibit 1) in Superior Court for San Francisco County because it had evidence that Plaintiff resided in the City and County of San Francisco.

41. On about December 15, 2013, Defendants attempted to serve copies of the summons and complaint in the *NCT v. Bartell* state court lawsuit by means of a defective substitute service at Bartell's former residence in Berkeley, in the County of Alameda, State of California, where Plaintiff had not lived since March 31, 2009. The service purporting to be substitute service was defective because the person then residing at Plaintiff's former residence in Berkeley informed the process

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<sup>4</sup> See *Clomon v. Jackson* (2d Cir. 1993) 988 F.2d 1314 and *Avila v. Rubin* (7th Cir. 1996) 84 F.3d 222, 228-29.

1 server that Plaintiff did not reside at the address, and the resident refused to accept  
 2 the summons and complaint. However, Defendants filed a Proof of Service based  
 3 on the defective service and attempted to obtain a default against Plaintiff.

4 42. Plaintiff is informed and believes and thereon alleges that Defendants  
 5 did not conduct a reasonably diligent search for the residence address of plaintiff,  
 6 and that Defendants should have known that the residence address in Berkeley was  
 7 several years old, before they sent the process server to the Berkeley address.

8 43. On February 13, 2014, Defendants submitted a Request for Entry of  
 9 Default to San Francisco Superior Court which declared that Plaintiff's last known  
 10 address was something other than her address in San Francisco at that time. Again,  
 11 Defendants failed to conduct a reasonably diligent search for the residence address  
 12 of Plaintiff.<sup>5</sup>

13 44. At the time that the *NCT v. Bartell* state court lawsuit was purportedly  
 14 served in Berkeley, in the County of Alameda, Plaintiff resided in the City and  
 15 County of San Francisco.

16 45. On about February 15, 2014, Plaintiff found out about the lawsuit and  
 17 that there was a proof of service on file with the court indicating that plaintiff had  
 18 been served at her former residence in Berkeley, County of Alameda.

19 46. Plaintiff thereafter hired the undersigned attorney to represent her,  
 20 thereby incurring actual damages in the form of attorney fees and costs of suit.  
 21 Plaintiff filed a motion to quash service of the summons, which was granted.

22 47. Plaintiff has thus demonstrated through the state court proceeding  
 23 quashing service of summons that Defendants attempted to collect a debt when  
 24 plaintiff had not legally been served. Defendants cannot avoid liability simply by  
 25

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26  
 27 <sup>5</sup> CCP § 587 requires that a declarant conduct a thorough, systematic  
 28 investigation and inquiry in good faith to locate the proper mailing address  
 of a person against whom a default would be taken. *Slusher v. Durrer*  
 (1977) 69 Cal. App. 3d 747, 755.

1 claiming that they hired an independent process server and thus did not “know”  
2 that service of process had not been legally effected.<sup>6</sup>

3 48. Plaintiff has also demonstrated through the state court proceeding  
4 quashing service of summons that Defendants attempted to collect a consumer  
5 debt by means of judicial proceedings in a county other than the county in which  
6 the debtor has incurred the consumer debt or the county in which the debtor  
7 resided at the time such proceedings are instituted, or resided at the time the debt  
8 was incurred, in violation of Civil Code § 1788.15(b).

9 49. Defendants’ multiple acts of misconduct during the litigation, including  
10 filing and prosecuting the complaint which falsely claimed that Plaintiffs had an  
11 agreement with NCT, failing to accurately identify the original creditor, seeking to  
12 collect a debt which NCT did not have the right to collect, and attempting to serve  
13 Plaintiff in a County other than where she resided, are false, deceptive or  
14 misleading representations, and unfair or unconscionable means in connection  
15 with the collection of debt,<sup>7</sup> all of which amount to a continuing course of unlawful  
16 conduct which extended over a period of time.<sup>8</sup>

17 50. As a result of Defendants’ abusive debt collection practices, Plaintiff has  
18 incurred actual damages including costs and attorney fees in an amount to be  
19 determined at trial.<sup>9</sup>

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21 <sup>6</sup> *Scott v. Kelkris* (E.D. Cal.) 2010 WL 4393274, \*4; *Bishop v. Silva* (6th  
22 Dist. 1991) 234 Cal. App. 3d 1317, 1322.

23 <sup>7</sup> 15 U.S.C. § 1692e, *McCollough v. Johnson, Rodenburg & Lauinger* (9th  
24 Cir. 2011) 637 F. 3d 939, 950-951, quoting *Heintz v. Jenkins* (1995) 514  
U.S. 291, 294).

25 <sup>8</sup> *Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal. App. 4th  
26 324, 344.

27 <sup>9</sup> *Owens v. Howe* (N.D. Ind. 2005) 365 F. Supp. 2d 942, 948 (the attorney  
28 fees and costs incurred defending a state court action are awardable as  
actual damages under 15 U.S.C. § 1692k(a)(1); (*See Lowe v. Elite Recovery  
Solutions, L.P.* (E.D. Cal. Feb. 4, 2008) 2008 WL 324777.)

51. Plaintiffs are informed and believe, and thereon allege, that Defendants have filed and served standard form complaints in the form of Exhibit 1 on more than 40 persons in the State of California in the one year preceding the filing of this Complaint. Therefore, Plaintiff may seek leave to amend this Complaint to add class allegations at a later date.

## CLAIMS

### FAIR DEBT COLLECTION PRACTICES ACT

52. Plaintiff brings the first claim for relief against Defendants P&F, KAHN, and NCO under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

53. Plaintiff incorporates all paragraphs in this Complaint as though fully set forth herein.

54. Plaintiff HEATHER BARTELL is a “consumer” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(3).

55. Defendant NCO is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(6).

56. Defendant P&F is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(6).

57. Defendant KAHN is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(6).

58. The financial obligation sought to be collected from Plaintiff in the state court action is a debt as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).

59. Defendants violated the FDCPA, 15 U.S.C. §§ 1692d, 1692e, 1692e(2), 1692e(10) and 1692f by making false and misleading representations, and engaging in unfair and abusive practices. Defendants’ violations include, but are not limited to:

- a. placing a telephone call without meaningful disclosure of caller's identity, in violation of 15 U.S.C. § 1692d(6);

1           b. failing to disclose in the initial oral communication that debt collector is  
2 attempting to collect a debt, in violation of 15 U.S.C. § 1692e(11);

3           c. making and using false, deceptive, and misleading representations in an  
4 attempt to collect the alleged debt, in violation of 15 U.S.C. §§ 1692e and  
5 1692e(10);

6           d. misrepresenting the character, amount or legal status of the alleged  
7 debt, in violation of 15 U.S.C. § 1692e(2)(A);

8           e. falsely representing or implying that attorney KAHN had professionally  
9 reviewed Plaintiff's account when KAHN had not done so, in violation of 15  
10 U.S.C. §§ 1692e(3) and 1692e(10);

11           f. falsely representing the role and involvement of legal counsel, in  
12 violation of 15 U.S.C. §§ 1692e(3) and 1692e(10);

13           g. misrepresenting the true source or nature of the communication, in  
14 violation of 15 U.S.C. §§ 1692e, 1692e(3) and 1692e(10);

15           h. attempting to collect a nonexistent debt from Plaintiff, an action that  
16 cannot lawfully be taken, in violation of 15 U.S.C. §§ 1692e, 1692e(5) and  
17 1692e(10);

18  
19           60. Defendants' acts as described above were done intentionally with the  
20 purpose of coercing Plaintiff to pay the alleged debt.

21           61. As a result of Defendants' violations of the FDCPA, Plaintiff is entitled to  
22 an award of actual damages, statutory damages, costs and reasonable attorneys  
23 fees, pursuant to 15 U.S.C. § 1692k.

24           62. Pursuant to California Civil Code § 3345, Plaintiff is entitled to an award  
25 of up to three times greater than the amount authorized by 15 U.S.C. § 1692k.  
26  
27  
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ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

63. Plaintiff bring the second claim for relief against Defendants NCT, P&F and NCO under the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), California Civil Code §§ 1788-1788.33.

64. Plaintiff incorporate all paragraphs in this Complaint as though fully set forth herein.

65. Plaintiff is a “debtor” as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(h).

66. Defendant NCT is a “debt collector” as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(c).

67. Defendant P&F is a “debt collector” as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(c).

68. Defendant NCO is a “debt collector” as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(c).

69. The financial obligation sought to be collected from Plaintiff in the state court action is a “consumer debt” as that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(f).

70. Defendants NCT, P&F and NCO violated the RFDCPA, California Civil Code §§ 1788.13(i), 1788.14(b), 1788.15(a), 1788.16, 1788.17 and 1788.18(b) by making false and misleading representations, and engaging in unfair and abusive practices. Defendant’s violations include, but are not limited to:

a. making and using false, deceptive, and misleading representations in an attempt to collect the alleged debt, in violation of Civil Code § 1788.17;

b. misrepresenting the character, amount or legal status of the alleged debt, in violation of Civil Code § 1788.17;

c. falsely representing or implying that attorney KAHN had professionally reviewed Plaintiff’s account when KAHN had not done so, in violation of Civil Code §§ 1788.13(i), 1788.16 and 1788.17;



1 d. falsely representing the role and involvement of legal counsel, in  
2 violation of Civil Code §§ 1788.13(i), 1788.16 and 1788.17;

3 e. misrepresenting the true source or nature of the communication, in  
4 violation of Civil Code §§ 1788.13(i), 1788.16 and 1788.17;

5 f. attempting to collect a nonexistent debt from Plaintiff, an action that  
6 cannot lawfully be taken, in violation of Civil Code §§ 1788.13(e) and 1788.17;

7 g. use of judicial proceedings to collect a consumer debt without service of  
8 process, including attempting to obtain a judgment, in violation of Civil Code §  
9 1788.15(a).

10 h. collecting or attempting to collect a consumer debt by means of judicial  
11 proceedings in a county other than the county in which the debtor has incurred  
12 the consumer debt or the county in which the debtor resides at the time such  
13 proceedings are instituted, or resided at the time the debt was incurred, in  
14 violation of Civil Code § 1788.15(b).

15 71. Defendants' acts as described above were done willfully and knowingly  
16 with the purpose of coercing Plaintiff to pay the alleged debt, within the meaning of  
17 Cal. Civil Code § 1788.30(b).

18 72. As a result of Defendants' violations of the RFDCPA, Plaintiffs are  
19 entitled to an award of actual damages in an amount to be determined at trial,  
20 pursuant to Cal. Civil Code § 1788.30(a).

21 73. As a result of Defendants' willful and knowing violations of the RFDCPA,  
22 Plaintiffs are entitled to an award of a statutory penalty in an amount not less than  
23 one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000) against  
24 each Defendant, pursuant to Cal. Civil Code § 1788.30(b).

25 74. As a result of Defendants' violations of the RFDCPA, Plaintiffs are  
26 entitled to an award of statutory damages in an amount not exceeding \$1,000  
27 against each Defendant named in this cause of action, pursuant to Cal. Civil Code §  
28 1788.17 (*see* 15 U.S.C. § 1692k(a) (2)(A)).

75. As a result of Defendants' violations of the RFDCPA, Plaintiffs are entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Civil Code §§ 1788.30(c) and 1788.17 (*see* 15 U.S.C. § 1692k(a)(3)).

76. Pursuant to Cal. Civil Code § 1788.32, the remedies provided under the RFDCPA are intended to be cumulative and in addition to any other procedures, rights or remedies that the Plaintiff may have under any other provision of law.

#### REQUEST FOR RELIEF

Plaintiffs request that this Court:

a) Assume jurisdiction in this proceeding;

b) Declare that Defendant P&F violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692d(6) and 1692e(11);

c) Declare that Defendants P&F, KAHN and NCO violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692d, 1692e, 1692e(2), 1692e(10) and 1692f;

d) Declare that Defendants NCT, P&F and NCO violated the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§ 1788.13(i), 1788.14(b), 1788.15(a), 1788.15(b), 1788.17 and 1788.18(b);

e) Award Plaintiff actual damages in an amount to be determined at trial, pursuant to 15 U.S.C. § 1692k(a)(1) and Cal. Civil Code § 1788.30(a);

f) Award Plaintiff statutory damages in an amount not exceeding \$1,000, pursuant to 15 U.S.C. § 1692k(a)(2)(A);

g) Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than \$1,000 against each Defendant, pursuant to Cal. Civil Code § 1788.30(b);

h) Award Plaintiff statutory damages in an amount not exceeding \$1,000 against each Defendant, pursuant to Cal. Civil Code § 1788.17 (*see* 15 U.S.C. § 1692k(a)(2)(A));

(i) Award Plaintiff three times the amount authorized for statutory damages and statutory penalties as alleged above, pursuant to California Civil Code § 3345;

1 j) Award Plaintiffs the costs of this action and reasonable attorneys fees  
2 pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1021.5, 1788.17 (*see* 15  
3 U.S.C. § 1692k(a)(3)) and 1788.30(c); and

4 k) Award Plaintiffs such other and further relief as may be just and proper.  
5  
6

7 DATED: December 22, 2014

\_\_\_\_\_/s/ James A. Michel  
JAMES A. MICHEL  
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San Francisco CA 94131  
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Email: attyjmichel@gmail.com

Attorney for Plaintiff  
HEATHER BARTELL  
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12  
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14 DEMAND FOR JURY TRIAL

15 PLEASE TAKE NOTICE that Plaintiff HEATHER BARTELL hereby  
16 demands a trial by jury of all triable issues of fact in the above-captioned case.  
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18 DATED: December 22, 2014

\_\_\_\_\_/s/ James A. Michel  
JAMES A. MICHEL  
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# Exhibit 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>LAW OFFICES OF PATENAUE &amp; FELIX, A.P.C.</b> Raymond A. Patenaude, (#128855) / Michael R. Boulanger, (#226294) Michael D. Kahn, (#236898) / Tara Natarajan, (#263333) / Stephanie Boone, (#160182) 4545 Murphy Canyon Road, 3rd Floor, San Diego, CA 92123 TELEPHONE NO.: (858) 244-7600 FAX NO. (Optional): (858) 836-0318 E-MAIL ADDRESS (Optional): Michael.Kahn@pandf.us ATTORNEY FOR (Name): PLAINTIFF	<b>FOR COURT USE ONLY</b>  <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> Superior Court of California County of San Francisco  NOV 04 2013  CLERK OF THE COURT BY: <u>Mary Ann Moran</u> Deputy Clerk  <div style="font-weight: bold; font-size: 1.2em;">M.A. MORAN</div>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO</b>  STREET ADDRESS: 400 MCALLISTER STREET. MAILING ADDRESS: SAN FRANCISCO CA 94102 CITY STATE AND ZIP CODE: SAN FRANCISCO DIVISION - UNLIMITED CIVIL CASE BRANCH NAME:	
PLAINTIFF: NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S) DEFENDANT(S): HEATHER BARTELL, <input checked="" type="checkbox"/> and DOES 1 through 15, inclusive	
<div style="text-align: center; font-weight: bold;">CONTRACT</div> <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> COMPLAINT  <input type="checkbox"/> CROSS-COMPLAINT         </div> <div> <input type="checkbox"/> AMENDED COMPLAINT (Number):  <input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):         </div> </div>	
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	CASE NUMBER:  <div style="font-size: 1.5em; font-weight: bold;">CGC-13-535237</div>

1. Plaintiff\* (name or names): NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S)

alleges causes of action against defendant(s)\* (name or names): HEATHER BARTELL,

2. This pleading, including attachments and exhibits, consists of the following number of pages: 4

3. a. Each plaintiff named above is a competent adult

☒ except plaintiff (name): NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S)

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☒ other (specify): a Delaware Statutory Trust(s)

b. ☐ Plaintiff (name):

a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

b. ☐ has complied with all licensing requirements as a licensed (specify):

c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant(s) named above is a natural person

☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

\*If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

Form Approved for Optional Use  
 Judicial Council of California  
 PLD-C-001(20) [Rev. January 1, 2007]

**COMPLAINT—Contract**

14 of Page 1 of 2 Code of Civil Procedure, § 425.12

SHORT TITLE: NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S) VS.  
HEATHER BARTELL,

2139-101035596 2013101015:25 PATENAUE & FELIX (858) 836-0318 Page 15 of

CASE NUMBER:

4. (Continued)

b. The true names of defendant(s) sued as Does are unknown to plaintiff.

(1) ☐ Doe defendant(s) (specify Doe numbers): \_\_\_\_\_ were the agents or employees of the named defendant(s) and acted within the scope of that agency or employment.

(2) ☒ Doe defendant(s) (specify Doe numbers): 1 through 15 are persons whose capacities are unknown to plaintiff.

c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.

d. ☐ Defendant(s) who are joined under Code of Civil Procedure section 382 are (names):

5. ☐ Plaintiff is required to comply with a claims statute, and

a. ☐ has complied with applicable claims statutes, or

b. ☐ is excused from complying because (specify):

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

7. This court is the proper court because

a. ☐ a defendant(s) entered into the contract here.

b. ☐ a defendant(s) lived here when the contract was entered into.

c. ☒ a defendant(s) lives here now.

d. ☐ the contract was to be performed here.

e. ☐ a defendant(s) is a corporation or unincorporated association and its principal place of business is here.

f. ☐ real property that is the subject of this action is located here.

g. ☐ other (specify):

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

☒ Breach of Contract

☒ Common Counts

☒ Other (specify): Refer to Other allegations in number 9.

9. ☒ Other allegations: Before commencement of this action, in those cases where recovery of costs is dependent on such notices, Plaintiff informed the defendant(s) in writing it intended to file this action and that this action could result in a judgment against defendant(s) that would include court costs and necessary disbursements allowed by CCP Section 1033(b)(2).

10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

a. ☒ damages of: \$43,479.05

b. ☐ interest on the damages

(1) ☐ according to proof

(2) ☐ at the rate of (specify): \_\_\_\_\_ percent per year from (date):

c. ☐ attorney's fees

(1) ☐ of:

(2) ☐ according to proof.

d. ☒ other (specify): For such other relief as the Court deems just and fair.

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: October 10, 2013

MICHAEL KAHN, ESQ.

(TYPE OR PRINT NAME)

ISI

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

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 SHORT TITLE: NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S) vs.  
 HEATHER BARTELL, CASE NUMBER:

FIRST

(number)

## CAUSE OF ACTION—Breach of Contract

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S)

alleges that on or about (date): August 29, 2005

a ☒ written ☐ oral ☐ other (specify):

agreement was made between (name parties to agreement): NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S) and HEATHER BARTELL,

☐ A copy of the agreement is attached as Exhibit A, or☒ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☒ are as follows (specify):

Defendant(s) entered into a written contract with Plaintiff, whereby Plaintiff loaned money to Defendant(s) for the financing of Education expenses. Plaintiff is the assignee for consideration of this contract. The terms and conditions under which Defendant(s) agreed to repay Plaintiff for the monies loaned are set forth in a written contract and /or loan agreement between the parties. Defendant(s) indicated his/her/their consent to be bound by these terms either by an authorizing signature on the agreement or by Defendant(s) taking possession of and using the monies provided by Plaintiff.

BC-2. On or about (date): December 01, 2010

Defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☒ the following acts

(specify): Defendant(s) failed to make payments on the contract as agreed and, despite Plaintiff demand Defendant(s) continues to refuse to pay Plaintiff the amount owed under the contract. Defendant(s) is in default and, such under the terms of the contract Plaintiff is entitled to the unpaid balance, attorney's fees and costs.

BC-3. Plaintiff has performed all obligations to Defendant(s) except those obligations Plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by Defendant's breach of the agreement

☐ as stated in Attachment BC-4 ☒ As follows :

1. The principal sum of \$43,479.05;
2. Costs of suit;
3. For such other and further relief as the Court deems just and fair.

BC-5. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$☐ according to proof:BC-6. ☐ Other:Page 3  
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SHORT TITLE: NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S) VS. HEATHER BARTELL,	2139-101035596 2013101015:25 PATENAUE & FELIX (858) 836-0318 Page NUMBER:
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SECOND

(number)

## CAUSE OF ACTION—Common Counts

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name): NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3, A DELAWARE STATUTORY TRUST(S)

alleges that Defendant(s) (name): HEATHER BARTELL,

became indebted to ☒ plaintiff ☐ other (name):a. ☒ within the last four years(1) ☐ on an open book account for money due.(2) ☒ because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.b. ☒ within the last ☐ two years ☒ four years(1) ☐ for money had and received by defendant for the use and benefit of plaintiff.(2) ☐ for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff☐ the sum of \$☐ the reasonable value.(3) ☐ for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff☐ the sum of \$☐ the reasonable value.(4) ☐ for money lent by plaintiff to defendant at defendant's request.(5) ☐ for money paid, laid out, and expended to or for defendant at defendant's special instance and request.(6) ☒ other (specify): This cause of action is based upon account number XXXXX2641/002-001000 for the sum by which Defendant has been unjustly enriched by virtue of Defendant receiving monetary or other benefit, by Defendant knowingly requesting the funds at issue and/or accepting the benefits bestowed. It is inequitable for Defendant to retain said benefits without repaying Plaintiff the value thereof.CC-2. \$43,479.05, which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest ☐ according to proof ☐ at the rate of \_\_\_\_\_ percent per year from (date):CC-3. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$☐ according to proof.CC-4. ☒ Other: For such other and further relief as the Court deems just and fair.Page 4  
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